

REMARKS

Claims 1-20 are now in this application. Claims 5-8 are withdrawn from consideration. Claims 1-4 and 9-18 are rejected. Claims 3, 9, 10 and 12 are amended herein to broaden language as deemed appropriate and to address matters of form unrelated to substantive patentability issues. New claims 19 and 20 are added.

The Office Action requests that applicant affirm the election made during a telephone conversation on February 9, 2005. Applicant herein affirms election of Species 2, claims 1-4 and 9-18 without prejudice, reserving the right to pursue further prosecution of the non-elected claims. In addition, applicant wishes to note that, in addition to claim 1, indicated as considered generic by the Examiner, applicant believes claims 4 and 17 to also be generic.

Applicant herein traverses and respectfully requests reconsideration of the rejection of the claims cited in the above-referenced Office Action.

Claims 1-4, 9-12 and 15-18 are rejected under 35 U.S.C. § 102(e) as being anticipated by Willinger et al. (US 6,651,590). Applicant herein respectfully traverses these rejections.

For a rejection to be sustained under §102(e) each and every element of the claimed invention must be disclosed in the cited prior art reference. It is respectfully submitted that the cited reference fails to disclose at least the following features and elements of the present invention as noted herein.

Claim 1 recites in pertinent part the following:

a structural configuration including a portion
thereof defining an animal restricted region; and
said structural configuration including an
other portion defining an animal access region

In order to correctly determine the scope and meaning of the terms used in claim 1, the Examiner's attention is drawn to the definition of each of the "animal restricted region" and "animal access region," respectively, a portion of which appears at the paragraph bridging pages 2 and 3 of the specification. The passage sets forth that "a region of the structure of the toy which a dog is more likely to bite and hold with its mouth by virtue of either enhanced sensory attraction and/or greater relative physical accessibility is referred to by the term 'animal access region.' Conversely, a region or regions which are less likely to be accessed by the pet during play by reason of less sensory appeal and/or structural inaccessibility are referred to

by the term ‘animal restricted region.’” This definition is further discussed at the paragraph bridging pages 7 and 8, wherein it is stated that characteristics “which control the respective relative degrees of animal interest in picking up the toy by one region or another may be sensory-based, i.e., involving such factors as smell, taste, appearance, surface feel, hardness, etc., and/or may be a structural feature which physically inhibits or discourages access by a dog’s mouth to a given one of the regions designed to be held by a user and therefore intended to be accessed to a lesser relative degree by the dog or other animal.”

As such, the structure shown in Fig. 22 of Willinger et al., and further described in the written disclosure, does not read on the claimed invention of claim 1. The disclosure of Willinger et al. is silent regarding any design feature which would make one region of the depicted structure more or less attractive or accessible to a dog or other animal. Furthermore, if it is the Examiner’s position that such feature is inherent in the depicted configuration, and therefore need not be supported by the written description, applicant respectfully submits that the Examiner has failed to meet her burden by failing to provide evidence in support of her alleged position that an animal would have any particular preference in picking up the toy by any particular region, particularly since it would appear that all parts of the toy are equally accessible by a snout of a dog or other animal. The mere provision of ends of the toy which may be presented in sideways facing orientations with nothing else

in the way of teaching of the claimed characteristics which are “sensory-based, i.e., involving such factors as smell, taste, appearance, surface feel, hardness, etc., and/or ... a structural feature which physically inhibits or discourages access by a dog’s mouth to a given one of the regions ... intended to be accessed to a lesser relative degree by the dog or other animal” which at least partially defines the relative terms of “animal access” and animal restricted” regions, respectively, does not satisfy the metes and bounds of the language of claim 1, and therefore fails to anticipate. In this regard, there is no evidence, teaching, or suggestion in Willinger et al., nor has an adequate showing been made by the Examiner, beyond mere speculation, tending to establish that an animal would have any preference whatsoever in picking up the toy of Willinger et al. by any particular part thereof more than another. The animal is not inhibited or discouraged by any structure shown in Fig. 22 to gain access to the fully exposed and flush ends. Applicant submits that the dog would simply approach the toy from either end, or tilt its head to the side, and readily grab the radially disposed and spaced apart spokes. Nothing in the toy of Fig. 22 shows “a structural feature which physically inhibits or discourages access by a dog’s mouth” as claimed using the term clearly defined in the instant specification.

It is respectfully submitted that the Examiner is attributing arbitrary physical characteristics to structural portions of the toy shown in Fig. 22 of Willinger et al., and moreover characteristics wholly unsupported by the disclosure of the cited

reference. Simply calling one part of the toy an “animal restricted region” and another part an “animal access region” does not *per se* endow the required physical requirements necessary for the toy to provide the features as claimed. The following hypothetical clearly demonstrates the fatal flaw in the Examiner’s unsubstantiated labeling of Fig. 22. If one were simply to apply a flavor or smell which is attractive to a dog on the structure defining the end regions of the cylindrical toy of Fig. 22, which are apparently characterized by the Examiner to be equivalent to the claimed “animal restricted regions,” in actuality they would function as “animal access regions” by attracting the dog specifically to these side regions. Indeed nothing in the physical structure of the toy would prevent, discourage or inhibit these end portions of the toy from being freely accessible to an animal.

Similarly, claim 4 recites in pertinent part the following:

at least one structural portion being disposed
in a position readily accessible by a mouth of the
animal and by which the animal can hold the toy by
retaining the at least one structural portion in the
mouth;

at least one hand-holdable portion grippable
by the user; and

a shielding portion arranged to at least
partially discourage animal access to said at least one
hand-holdable portion

As discussed above, the toy and disclosure of Willinger et al. contains no structural portions that could reasonably be described or interpreted as “shielding structure” within the context of the claim language as supported by the disclosure.

Claim 17 also contains the method steps of:

providing the toy with an animal access region
readily available to gripping in a mouth of the animal;
and

providing the toy with an animal restricted
region which is less likely to be accessed by the
mouth of the animal, said animal restricted region
being hand-holdable by the user.

These steps require the toy to have functional characteristics generally analogous to the toy claimed in claim 1, and therefore also fail to be anticipated by the disclosed toy of Willinger et al..

Under 35 U.S.C. §102, anticipation requires that each and every element of the claimed invention be disclosed in the prior art. Furthermore, the prior art reference must be enabling, i.e., it must contain within its four corners a sufficient description to enable one to practice the invention of the rejected claim without undue experimentation or inventive skills. *Akzo N.V. v. U.S. Intern. Trade Com'n*, 1 USPQ2d 1241, 1245 (Fed. Cir 1986). Such is not the case in the present instance, as clearly demonstrated above.

Independent claims 1, 4 and 17 particularly describe and distinctly claim at least one element not disclosed in the cited reference. The remaining rejected claims depend from respective ones of claims 1, 4 and 17 and therefore also contain the element lacking in Willinger et al., noted above. Therefore, reconsideration of the rejection of claims 1-4, 9-12 and 15-18 and their allowance are respectfully requested.

Claims 13 and 14 are rejected as obvious over Willinger et al. under 35 U.S.C. §103(a). The applicant herein respectfully traverses this rejection.

It is respectfully submitted that the Willinger et al. reference cannot render the rejected claim obvious because the reference does not provide the teaching noted above with respect to the anticipation rejection of claim 4 from which these claims depend. Thus, the reference fails to teach or suggest all the claim limitations.

Therefore, reconsideration of the rejection of claims 13 and 14 and their allowance are respectfully requested.

It is further noted that the above discussed features were present in the originally filed claims. As such, the present amendments cannot necessitate new grounds for rejection as the present rejections are respectfully submitted as failing to have been established. Accordingly, it is respectfully submitted that a next Office Action cannot be made final.

Dependent claims 19 and 20 are added and are submitted as patentable over the cited art of record based on the subject matter cited therein in addition to the subject matter of their respective base claims.

Applicant respectfully requests a three (3) month extension of time to extend the response date to August 23, 2005. Please find Check No. 432 in the amount of \$510.00 to cover the above fee which accompanies a Petition For Extension filed herewith.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Lawrence I. Wechsler', written in a cursive style.

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